

**REMARKS:**

**RESPONSE TO CLAIM REJECTIONS UNDER 35 USC 103**

**First Rejection**

The Examiner has rejected claims 1-6 and 10-12 under 35 USC §103(a) as unpatentable over Evans (U.S. Patent No. 5,924,074) in view of McCormick (USPAP 2002/0120573). Applicant respectfully traverses this objection. Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

Applicant respectfully submits that nothing in the art of record teaches or suggests the present invention.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

MPEP 706.02(j).

In this instance none of the three basic criteria are met; therefore, a case for obviousness is not established.

The Tucker application is a system and process for prescribing medications through the Internet comprising a secured, interactive website for entering and retrieving medical prescriptions. See Flow Chart #1. A physician enters

a patient's prescription to the website via the Internet by a general use computer. A remote dedicated server is connected to the Internet with access limited to users having the authorized I.D.'s, i.e. a pharmacy access code. The remote server comprises computer hardware capable of storage of data for the website. A high security Internet service provider is connected to the remote server for providing access to website by authorized personnel.

In rejecting Claim 1, the Examiner objects to claim 1 stating Evans teaches a system for providing prescription information that is implemented over the Internet. However, none of the limitations cited by the Examiner are actually in the Evans '074 patent nor in the combination of Evans combined with McCormick. The Evans patent pertains to an electronic medical records (EMR) system. See Flow Chart #2. Although subscribing medical facilities may access records, including prescriptions, via the Internet, it is not exclusively a system for prescribing medications as is the present invention. Nor does it specifically provide a system and process for prescribing medication through the Internet that is both simple and yet highly secure; secure because each user has an individual authorized I.D. code.

The Examiner states the Evans system comprises: 1. (a) a secured, interactive website for entering and retrieving medical prescriptions, the website accessible via the Internet by a general use computer (*Evans, Fig. 24; col. 12, line 55 – col. 14, line 25*). This is the exact wording of the present invention's Claim 1 (a), not the disclosure in Evans '074. Figure 24 and the reference cited to the Evans patent describe the configuration for the electronic medical records system which differs both in the structure of the system and how it functions.

In the '074 patent the patient data repository as described may transmit a physician's prescription for medication to a hospital or pharmacy. However, the information is transmitted or accessed by means of a complex interface registry of data formats for external sources. *Col. 10, line 19 - 35*. The interface registry includes an interface manager to transfer and receive patient data from external

sources. This interface manager creates and maintains the interface registry. If the registry does not include an interface for an external source, the interface manager reports an error. *Col. 11, line 3 – 5*. In contrast, the present system allows for direct connection into the remote server to retrieve the patient's prescription information. The remote server is a repository for patient information as well as prescription information. Access to the data is simple for authorized users.

Further, to access the Evans EMR system through the World Wide Web, the user must be able to access the wide area network (WAN), which is a plurality of local area network (LAN) servers specifically supporting local and remotely located healthcare providers using the system. *Col. 12, line 58 – 63*. As shown in Flow Charts 1 and 2, a series of servers is required for the Evans system, whereas in the present invention, the system is directly tied to a remote server. *Page 2, lines 6 – 9, attached Flow Charts*.

Next, the Examiner states the Evans system comprises: 2. (c) the secured website of (a) further secured by limiting access to medical personnel having an authorized I.D.; (*col. 10, line 59 – col. 11, line 9; col. 14, line 62 – col. 15, line 32*). Again, this is a rewording of claim 1 (c) of the present invention, not a claim of Evans. The cites, *col. 10, line 59 – col. 11, line 9*, to the Evans patent describes how an external source, if there is an external source, may request data from a patient record and uses as an example the potential to transmit a physician's prescription for medication to a hospital or pharmacy. The cite to *col. 14, line 62 – col. 15, line 32* describes the entry and access of data in the EMR system. There is no mention of securing the access to medical personal by use of an authorized I.D., only that the system is protected by a tiered password system. Evans '074 secured access differs from the present invention. In Applicant's invention where security is of the utmost importance, each individual has their own unique I.D. access to the system, *Page 5, line 3-5*. Evans teaches that anyone who might obtain the general password(s) can access the '074 system. Contrary to the Examiner's conclusion, the Evans patent does not disclose a system secured by an authorized I.D. for each user.

The Examiner states the Evans system comprises: 3. (d) a remote dedicated server connected to the Internet with access limited to users having the authorized I.D's of step (c), the remote server comprising computer hardware capable of storage of data for the website of step (a); (*col. 12, line 56 – col. 13, line 56; col. 14, line 62 – col. 15, line 32*). This wording is copied from claim 1 (d) of the present invention. The Evans cites describe the EMR system configuration (*col. 12, line 56 – col. 13, line 56*) and the entry and access of data in the EMR system (*col. 14, line 62 – col. 15, line 32*). In contrast to Evans in house "remote" servers, which are independent, i.e. Boston, New York or Washington server, the server in the present invention is a central remote server, maintained by the medical prescription service, without sensitive patient information being stored by a third party server. *Page 8, line 14 – 16, page 12, line 1.*

The Examiner states the Evans system comprises: 4. (e) a high security internet service provider connected to the remote server for providing access to website by personnel authorized according to step (c); (*Fig. 24; col. 12, lines 62 – col. 15, line 32*). Again, this is the wording of Applicant's claim 1 (e) of the present invention. The cite to the Evans patent are as described above. The Evans patent does not provide for an Internet service provider connecting to a remote server for providing access to website by authorized personnel. Evans system is much more complex comprising the necessity of having to access multiple sites, in that the user must be able to access the wide area network (WAN), which uses the local area network (LAN) servers specifically supporting local and remotely located healthcare providers using the system.

The Examiner further states the Evans system comprises: 5. (f) means for creating a patient file with patient identifying information; (*col. 2, line 22- col. 3, line 23; col. 7, line 65 – col. 9, line 14; Figures 12 – 14*); 6. (g) means for entering patient prescription into patient file created in step (f); (*col. 11, lines 65 – col. 12, line 35; Figure 19*); 7. (h) means for retrieving patient prescription information from patient file

(Fig. 11, col. 7, line 65-col. 9, line 14; col. 10, line 59 – col. 11, line 9); 8. (i) means for entering data regarding filling of prescription in patient file; (Figures 21 –22; col. 10, line 59 – col. 11, line 9); 9. (g) means for logging off patient file screen so as to secure patient information. (Figures 2-3; col. 12, lines 16 –35; e.g. exit button). One more time, these are claims 1 (f) – (j) are Applicant's wording for his invention. Although patient files are created in both Evans and the present invention, the Evans patent does not provide these files for access across the World Wide Web for allowing the patient to have a prescription filled at the preferred pharmacy of choice for the patient. Under the Evans system, only those subscribing medical facilities with access to the system may access a prescription. The benefit of Applicant's prescription system is that any pharmacy, world wide, with an I.D. code authorized by the patient can access the doctor's prescription so that the patient can receive his/her medication. *Page 5, line 11 and page 16, lines 3 – 8.*

As to the Examiner's rejection's of claims 2 – 6, again the Examiner is citing the Applicant's own claims against the Applicant. As claims 2 – 6 are dependent on claim 1, and claim 1 is in order to be allowable so are the dependent claims.

As to the Examiner's rejection's of claims 10 – 12, again the Examiner is citing the Applicant's own claims against the Applicant. However, as the Evans system is not an Internet based system, i.e. the computer server is in house, there would be no need for using encryption to secure the system. As claims 11– 12 are dependent on claim 10, and claim 10 is in order to be allowable so are the dependent claims.

Applicant respectfully requests Examiner's reconsideration and withdrawal of the rejection of claims 1 – 6 and 10 – 12.

### **Second Rejection**

The Examiner has rejected claims 7 and 8 under 35 §USC 103(a) as unpatentable over Evans and McCormick in view of Mayaud. As the Examiner gives no citation to for Mayaud, Applicant assumes Examiner means the Mayaud

5,845,255 patent. Applicant respectfully traverses this objection. Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

Examiner's characterization of the Evans patent is disagreed with as fully explained above in the First Rejection section as Examiner cites Applicant's claims against Applicant, and the Evans patent does not disclose the claim limitations of the present invention. As to claim 7, Mayaud allows for a security system for preventing unauthorized access to a patient's data or a physician's prescribing profiles by graphic, photographic or fingerprint recognition. In the instant invention, biometric access is claimed, such as eye scanning and biometric means. As to claim 8, the Mayaud system links to a health insurance provider, allowing the provider access to the system for record element retrieval and record assembly. Using the Tucker invention allows an authorized user to link to an insurer's site; however, in contrast to Mayaud, the insurer does not have access to the prescription system.

Neither Evans nor Mayaud alone, nor in combination, teach the elements of Applicant's invention as claimed.

### **Third Rejection**

The Examiner has rejected claim 9 under 35 §USC 103(a) as unpatentable over Evans and McCormick in view of Boyer (U.S. Patent No. 5,907,493). Applicant respectfully traverses this objection. Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

Examiner's characterization of the Evans patent is disagreed with as fully explained above in the First Rejection section as Examiner cites Applicant's claims against Applicant, and the Evans patent does not disclose the claim limitations of the present invention. Further, the Boyer '493 system describes an invention for the dispensing of pharmaceuticals. The Examiner states Boyer teaches a system wherein pharmacy personnel retrieve the prescription entered into a patient file (*Figures 1b and 1c; Col. 5, line 36 – Col. 6, line 51*) and states "One would have

been motivated to include this feature to minimize treatment and drug dispensing errors by allowing the pharmacies to directly access the prescription information as entered by the prescriber.” However, the Boyer system does not disclose a feature allowing entry into a system by the prescriber. As described in *Col. 5, lines 41*: The prescription(s) is presented to the pharmacist via written prescription presented by the patient, or via written prescription provided in writing, by telephone, or by electronic transmission (e.g. fax, e-mail) directly from the doctor. In the Boyer invention, the pharmacist enters information of each individual prescription into his company computer. In the present invention, the prescribing physician directly enters the prescription into the central server for Internet access, where any pharmacist in the world may access the prescription, thereby negating the need for a written prescription.

Neither Evans, McCormick or Boyer alone or in combination teach the unique elements of Applicant’s invention.

### **REQUESTS**

Applicant respectfully requests Examiner’s withdrawal of the previous rejection under 35 U.S.C. §103 and consent to allowance of Applicant’s claims 1-12.

Applicant respectfully requests a telephone interview with Examiner to resolve any questions related to this response.

Respectfully submitted,

May 25, 2004

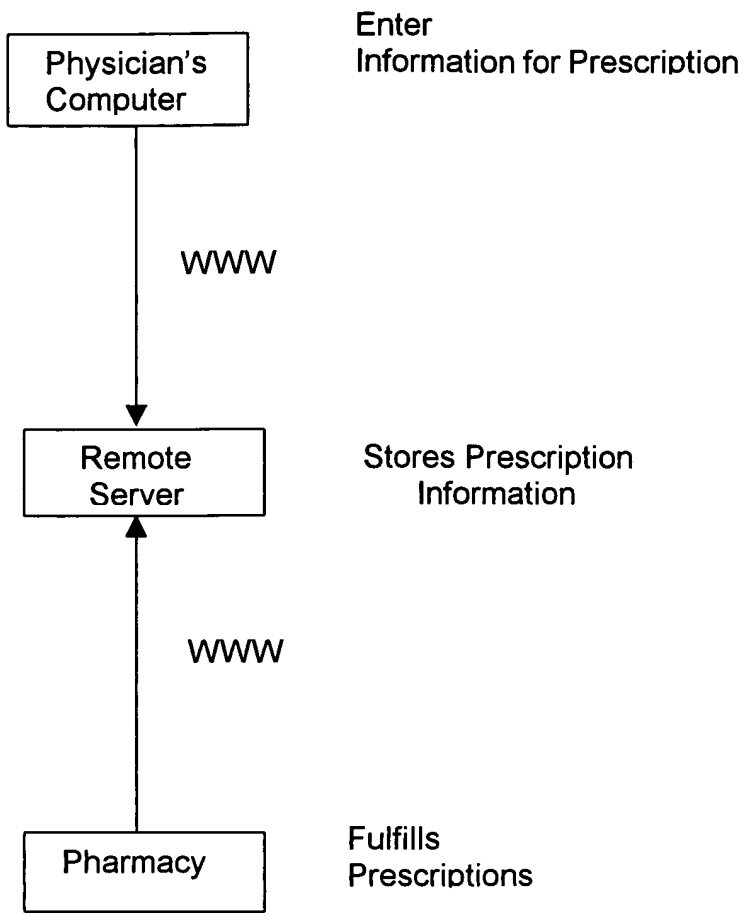


Jo Katherine D'Ambrosio  
Registration No. 35,617  
D'Ambrosio & Associates, PLLC  
10260 Westheimer, Ste. 465  
Houston, Texas 77042  
Phone: (713) 975-0800  
Fax: (713) 975-0995



**RECEIVED**  
JUN 8 2004  
**GROUP 3600**

OVERVIEW OF THE TUCKER SYSTEM USING THE WORLD WIDE WEB (WWW)  
FOR PRECRIBING MEDICATION



FLOW CHART #1



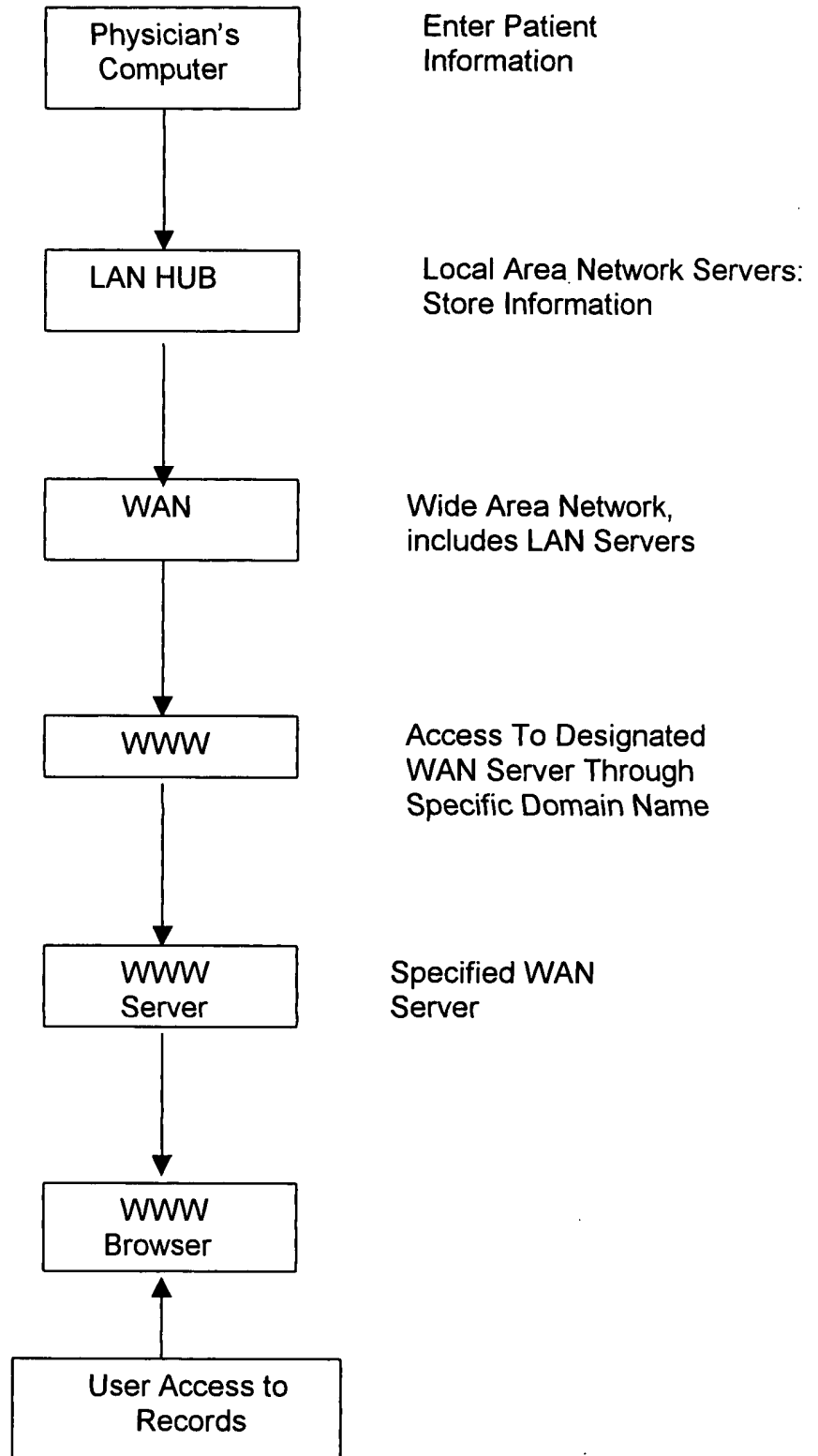


RECEIVED

JUN 8 2004

GROUP 3600

OVERVIEW OF THE EVANS '074 EMR SYSTEM CONFIGURATION FOR  
ACCESSING THE SYSTEM VIA THE WORLD WIDE WEB (WWW)



FLOW CHART #2